Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	MB Docket No. 04-256
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets	)	

To: The Secretary
Chief, Media Bureau

COMMENTS OF WHITE KNIGHT BROADCASTING, INC.

White Knight Broadcasting, Inc. ("White Knight"), by its attorneys, hereby submits these comments in response to the above-captioned Notice of Proposed Rulemaking,[1] seeking comments on whether same-market joint sales agreements ("JSAs") involving more than 15 percent of the weekly advertising time of a television station should be attributable to the brokering entity. As shown below, competitive marketplace realities and the public interest require the Commission to refrain from attributing television JSAs. Should the Commission nevertheless decide to make television JSAs attributable, JSAs currently in effect should be permanently grandfathered.

White Knight is the ultimate parent company of Warwick Communications, Inc., licensee of KFXK(TV), Longview, Texas; White Knight Broadcasting of Shreveport License Corp., licensee of KSHV(TV), Shreveport, Louisiana; Knight Broadcasting of Baton Rouge License Corp., licensee of WVLA(TV), Baton Rouge, Louisiana; and White Knight Broadcasting of

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[1] *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, FCC 04-173 (August 2, 2004). *See also* 69 Fed. Reg. 52464 (August 26, 2004) ("*NPRM*").

Natchez License Corp., licensee of WNTZ-TV, Natchez, Mississippi. These stations are brokered by another station in their markets, pursuant to JSAs entered into with license subsidiaries of Communications Corporation of America ("CCA"). Pursuant to the terms of the JSAs, CCA has purchased all of the commercial advertising time spots available on White Knight's stations during the term of the agreement. In each instance, White Knight's brokered stations retain 100% control over all aspects of programming decisions, including the selection, acquisition, and payment for all programming broadcast on the stations.

I. Contrary to the Commission's Suggestion in the NPRM, Television JSAs Foster Competition and Diversity In Local Markets and Should Therefore Not Be Made Attributable

In the *NPRM*, the Commission asserts that television JSAs are anticompetitive because they permit brokering stations to control the programming and core operations of brokered stations.[2] Based on White Knight's experience, this is simply not the case. As an initial matter, unlike actual ownership, JSAs involve only the sale of advertising time and have *nothing* to do with the provision of programming or with decisions related to other core operations of stations. Thus, JSAs do not raise diversity concerns regarding programming decisions that are the principal focus of the Commission regulations in this area. Consequently, they should not be considered attributable interests for purposes of local television ownership.

The Commission's presumption in the *NPRM* that television and radio JSAs are substantively similar is also misplaced.[3] In reality, radio and television stations and their respective markets are very different and are based upon distinct economic models. For instance, radio stations are more dependent on local advertisers than are television stations, and accordingly, the Commission's concern for potential anticompetitive conduct by local television

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[2] *NPRM* at ¶¶ 13, 15.

[3] *Id.* at ¶ 2.

stations operating pursuant to JSAs is less warranted. Television stations, unlike radio stations, also compete more directly for audience share with non-broadcast programming provided over cable and satellite systems, lessening concerns regarding potentially anticompetitive conduct. Additionally, television stations air more network programming than radio stations which is primarily based on the costs associated with local news programming in television.

In the context of radio JSAs, the Commission concluded that "JSAs put pricing and output decision in the hands of a single firm . . . eliminating competition in the market."[4] The Commission also concluded that "JSAs raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally."[5] However, these anticompetitive factors the Commission found in the radio market warranting attribution of JSAs are simply not present in television markets.[6] Specifically, White Knight's brokered television stations maintain financial incentives to control programming and to compete in their markets. In each market in which White Knight has executed a JSA, the brokering and brokered station combined have a significantly smaller share of the advertising revenue market than the number one-ranked station in that market, and the JSA is essential for the stations to remain competitive. Making television JSAs attributable would have the unintended consequence of placing less profitable station groups at a competitive disadvantage by hampering their ability to compete in local markets. Simply put, the Commission has provided no compelling evidence that the impact of JSAs on television markets and radio markets would be the same.[7]

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4 *See* Report and Order and Notice of Proposed Rulemaking, 18 F.C.C.R. 13620 at ¶ 319 (2003) ("*Local Ownership Order*").

5 *Id.*

6 *See NPRM,* at ¶ 15.

7 *See NPRM*, at ¶ 2.

Indeed, the economic circumstances that exist in White Knight's JSA markets underscore why the Commission should not attribute television JSAs. For example, in Shreveport, Louisiana, which has six full-power stations and is the 81st-ranked DMA, the dominant station KSLA, a CBS affiliate, has a 34 percent share of the advertising revenue in the market, while the *combined* share of CCA's brokering station KMSS and White Knight's brokered station KSHV, is only 16 percent.[8] Similarly, in Baton Rouge, Louisiana, the 95th-ranked DMA, which has four full power stations, the dominant station WAFB, a CBS affiliate, has a 47% advertising share, while the combination of WGMB, the brokering station, and WVLA, the brokered station, garner only a 24% share.[9] In Longview, Texas, which has 6 full power television stations and is the 107th-ranked DMA, KLTV, an ABC affiliate, has a 56 percent share of the advertising revenue in the DMA, while the combined share of KETK, the brokering station, and KFXK, the brokered station, is only 40 percent.[10]

As these economic figures show, the ability to enter into JSAs is essential to ensuring that less profitable broadcasters are able to compete with the dominant players in the local media marketplace. White Knight's JSAs have significantly reduced costs which has made its stations more competitive, allowing the stations to better compete with larger television groups in their markets. Under the JSAs, CCA employees perform administrative, accounting, and bookkeeping functions for the stations while White Knight's employees retain exclusive authority to hire and manage employees for the negotiation, preparation, execution, and implementation of the stations' programming requirements. This arrangement is cost effective as it eliminates the need for White Knight to hire additional staff to perform the administrative tasks that are unrelated to

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8 *See* Exhibit 1, BIA Investing in Television 2004 Market Report 1st Edition (February 2004).

9 *Id.*

10 *Id.*

programming. The cost savings associated with the JSAs have allowed White Knight to, among other things, build out digital facilities, purchase new and highly rated syndicated programming, and significantly upgrade station facilities. The *NPRM* presents no evidence whatsoever that JSAs are used to dominate local advertising markets. To the contrary, White Knight's JSAs have made its stations more competitive and have greatly improved White Knight's ability to compete in its markets to the ultimate benefit of viewers. White Knight's facilities will be substantially disadvantaged if JSAs are not permitted and the only benefits will accrue to the most highly ranked stations in the markets. Thus, attribution of JSAs will severely harm competition, particularly in small and medium-sized television markets.

II. Principles of Fairness, the Public Interest and Established Commission Precedent Require the Commission to Permanently Grandfather Television JSAs Currently In Effect

If the Commission were to conclude that television JSAs are attributable interests, despite the lack of record evidence, the Commission should permanently grandfather JSAs currently in existence. To do otherwise would be both manifestly unfair and contrary to the public interest. Moreover, a failure to grandfather JSAs permanently would be inconsistent with the Commission's recent decision in applying its new local ownership rules to permanently grandfather existing radio, television, and radio/television combinations.[11] In that decision, the Commission did "not require entities to divest their current interests in stations in order to come into compliance with the new ownership rules."[12] Like parties that acquired stations under the preexisting local ownership rules, parties that entered into JSAs prior to the Commission's

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11 *See Local Ownership Order*, at ¶ 484. Although the Commission chose not to permanently grandfather radio JSAs, as noted above, the differences that exist between radio and television JSAs and the anticompetitive factors the Commission found present in radio markets which are not present in television markets distinguish the radio JSA decision from the instant case.

12 *Id.*

adoption of an Order in this proceeding should not be penalized for their compliance with the FCC's attribution and local ownership rules that were in effect at the time they entered into JSAs. In short, to hold that a contract entered into by two parties in full compliance with all then-existing FCC rules and policies is now invalid, while at the same time permanently grandfathering non-compliant ownership of stations, would be fundamentally unjust. Grandfathering of existing ownership interests *and* television JSAs not only would be the most fair solution, it would also be consistent with established Commission precedent.

The Commission's recent decision in its *Local Ownership Order* to grandfather existing ownership interests is but the most recent example of a longstanding and consistent policy to grandfather such interests. For example, when the Commission originally adopted its newspaper/broadcast cross-ownership ban, the Commission required divestitures only in the most "egregious" of cases, namely where the commonly owned newspaper and television combination constituted a monopoly in a given market. *See Amendment of Sections 73.34, 73.240, and 76.636 of the Commission's Rules Relating to the Multiple Ownership Standard*, 50 FCC 2d 1046, 1078 (1975), *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978).[13] At that time, the Commission also concluded that parties would not be required to divest existing radio/television combinations that were in effect prior to the adoption of new rules. *Id.* at 1081-82. Fundamental to these decisions

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13 *See also Amendment of Part 73 of the Commission's Rules and Regulations With Respect to Competition and Responsibility in Network Television Broadcasting*, Memorandum Opinion and Order, 25 FCC 2d 318 (1970) *aff'd sub nom. Mansfield TV,Inc. v. FCC*, 442 F.2d 470 (2d Cir. 1971); *Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Memorandum Opinion and Order*, 3 RR 2d (P&F) 1554 (1964). When LMAs were deemed attributable in 1999, the Commission grandfathered existing LMAs until the conclusion of the 2004 Biennial Review. *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903 (1999) at ¶ 133.

was the Commission's understanding that forced divestiture would result in adverse public interest consequences.

The Commission listed several similar reasons in the *Local Ownership Order* for permanently grandfathering existing station combinations. According to the Commission:

> As suggested by commenters, doing so would unfairly penalize parties who bought stations in good faith in accordance with the Commission's rules. Also, we also are sensitive to commenters' concerns that licensees of current combinations should be afforded an opportunity to retain the value of their investments made in reliance on our rules and orders. We also agree with the commenters that argue that compulsory divestiture would be too disruptive to the industry. On balance, any benefit to competition from forcing divestitures is likely to be outweighed by these countervailing considerations.[14]

The very same rationale supports the grandfathering of existing television JSAs. Parties to such JSAs, like those that purchased stations, should not be penalized for their compliance with the policies that previously were in effect. Although television JSA investments are not equivalent to station ownership in terms of total dollars, these investments are nevertheless significant. Moreover, the investments were entered into based on prior FCC statements that television JSAs were not attributable interests. Such investments were made with the intent that they would be amortized over the full length of the JSA term and not merely for an arbitrarily shortened period.

Tellingly, the *NPRM* provides no basis as to why parties to television JSAs should not be afforded "the opportunity to retain the value of their investments made in reliance on [the FCC's] rules."[15] As the Supreme Court has stated, "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). In this case, there is simply no justification for the

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14 *R&O* at ¶ 484.

15 *Id.*

Commission to make television JSAs attributable, while at the same time grandfathering existing television group ownership. Accordingly, should the FCC decide to make television JSAs attributable, the Commission should permanently grandfather those JSAs currently in existence.

CONCLUSION

For the reasons set forth above, television JSAs should not be made attributable, but if Commission nevertheless decides to do so, it should permanently grandfather existing television JSAs.

Respectfully submitted,

WHITE KNIGHT BROADCASTING, INC.

By:/s/ Kathryn R. Schmeltzer
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EXHIBIT 1

BIA fn

Shreveport, LA Market Overview

DMA Rank: 81
BIA Revenue Rank: 83

Demographic and Economic Overview
(000s, except Retail Sales and EBI in $000,000s)

	1998	2003	Growth Rate	2003	2008	Growth Rate
DMA Population	967	998	0.6%	998	1,010	0.2%
Households	362	385	1.2%	385	397	0.6%
Retail Sales	NA 1/	10,453	NA 1/	10,453	11,777	2.4%
EBI 2/	12,486	14,364	2.8%	14,364	16,607	2.9%

Pop Rank #	77	**TV Households**	380	**White**	65.1%	**Avg Household**	$ 37,298
HH Rank #	81	**DMA Cable**	55%	**Black**	30.0%	**Per Capita**	$ 14,392
RS Rank #	90	**DMA ADS**	32%	**Asian**	0.5%	**Hispanic Origin**	4.1%
EBI Rank #	86	**DMA VCR**	86%			**DMA Counties**	26

Market Television Financials
(all figures in 000's, except percentages and ratios)

ESTIMATED GROSS REVENUES ★★★

1998	1999	2000	2001	2002	2003	Δ 98 - 03
$45,400	$47,800	$49,600	$43,400	$52,300	$49,300	1.6%
Δ 02 - 03	**2004**	**2005**	**2006**	**2007**	**2008**	**Δ 03 - 08**
-5.7%	$54,100	$54,700	$58,200	$58,800	$62,900	5.0%

Estimated Breakouts	% Network	% Natl/Regl	% Local
	6.0%	57.0%	37.0%

	1998	2003	2008
Revenue/Retail Sales	NA 1/	$4.72/1,000	$5.34/1,000
Revenue/Capita	$46.95	$49.40	$62.28

Shreveport, LA Competitive Overview

Calls	City Of License	Ch	Visual Power (kW)	HAAT	DTV Ch	LMA	Aff	Rep	Owner	Year Std	Date Acq'd	Sales Price (000)	Est '03 Revenue (000) 3/	Est Power Ratio	Avg '03 LCS	Feb 04	Nov 03	Jul 03	May 03	Feb 03	Nov 02	Jul 02	May 02
KTBS-TV	Shreveport	3	100	1,775	*28		ABC	KatzT	Wray, Edwin	55			15,500	1.05	30%	13	14	14	14	14	14	11	13
KTAL-TV	Texarkana	6	100	1,581	15		NBC	Blair	Nexstar Bcstg Group	53	0012	35,250	9,000	1.01	18%	8	8	9	8	8	9	8	9
KSLA-TV	Shreveport	12	316	1,801	*17		CBS	TelRp	Raycom Media Inc	53	9610	g	16,500	0.88	38%	19	20	17	18	18	18	17	17
KPXJ	Minden	21	3,020	469			PAX	KatzT	Minden Television	98	0310 p	10,000	325										
KMSS-TV	Shreveport	33	4,570	1,814	34	1	FOX	Mllmn	Comm Corp of America	85	9407	1,500+	6,000	1.52	8%	3	4	3	4	4	4	3	4
KSHV	Shreveport	45	2,950	1,663	44	1	WB		White Knight Bcstg	94	9505	3,800	1,900	0.77	5%	2	3	2	3	2	3	2	2
*KLTS-TV	Shreveport	24	1,620	1,070	*25		PBS		Louisiana ETV	78													
															TOTAL	**45**	**49**	**45**	**47**	**46**	**48**	**41**	**45**
															HUT %	39	39	37	36	39	38	36	36

SHARE SUMMARY 9:00 AM - MIDNIGHT (%)

Allocations: Ch 20, Natchitoches, LA; Ch 35, Marshall

1/ Estimate not available. See page 6. 2/ EBI estimates are for previous year than noted in column header. 3/ See introduction section for interpretation of revenue estimates.

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BIA fn

Baton Rouge, LA Market Overview

DMA Rank: 95
BIA Revenue Rank: 72

Demographic and Economic Overview
(000s, except Retail Sales and EBI in $000,000s)

	1998	2003	Growth Rate	2003	2008	Growth Rate
DMA Population	775	819	1.1%	819	841	0.5%
Households	273	302	2.0%	302	317	1.0%
Retail Sales	NA 1/	9,172	NA 1/	9,172	10,267	2.3%
EBI 2/	11,281	12,771	2.5%	12,771	15,221	3.6%

Pop Rank # 95	**TV Households**	300	**White**	62.5%	**Avg Household**	$ 42,305
HH Rank # 95	**DMA Cable**	76%	**Black**	34.5%	**Per Capita**	$ 15,592
RS Rank # 99	**DMA ADS**	14%	**Asian**	1.3%	**Hispanic Origin**	1.7%
EBI Rank # 96	**DMA VCR**	90%			**DMA Counties**	13

Market Television Financials
(all figures in 000's, except percentages and ratios)

ESTIMATED GROSS REVENUES ★★

1998	1999	2000	2001	2002	2003	Δ 98 - 03
$54,000	$55,900	$54,500	$50,100	$56,500	$56,400	0.9%
Δ 02 - 03	**2004**	**2005**	**2006**	**2007**	**2008**	**Δ 03 - 08**
-0.1%	$62,000	$62,700	$66,400	$67,100	$71,800	4.9%

	% Network	% Natl/Regl	% Local
Estimated Breakouts	3.8%	37.0%	59.2%

	1998	2003	2008
Revenue/Retail Sales	NA 1/	$6.15/1,000	$6.99/1,000
Revenue/Capita	$69.68	$68.86	$85.37

Baton Rouge, LA Competitive Overview

Calls	City Of License	Ch	Visual Power (kW)	HAAT	DTV Ch	LMA	Aff	Rep	Owner	Year Std	Date Acq'd	Sales Price (000)	Est '03 Revenue (000) 3/	Est Power Ratio	Avg '03 LCS	Feb 04	Nov 03	Jul 03	May 03	Feb 03	Nov 02	Jul 02	May 02
																SHARE SUMMARY 9:00 AM - MIDNIGHT (%)							
WBRZ	Baton Rouge	2	100	1,690	*13		ABC	Blair	Manship Stations	55			15,100	1.07	25%	12	13	10	13	13	13	13	13
WAFB	Baton Rouge	9	316	1,670	*46		CBS	HRP	Raycom Media Inc	53	9704	g	26,400	1.00	47%	25	25	20	23	26	23	20	22
WVLA	Baton Rouge	33	5,000	1,713	34		NBC	KatzT	White Knight Bcstg	71	9608	23,975	7,400	0.77	17%	8	7	7	8	8	9	7	9
WGMB	Baton Rouge	44	3,890	1,398	45		FOX	Mllmn	Comm Corp of America	91			6,300	1.02	11%	5	6	5	5	5	6	6	6
KZUP-CA	Baton Rouge	19	150 cp	339			IND		White Knight Bcstg	87	0209	353	300										
WBRL-CA	Baton Rouge	21	140	361			WB		Comm Corp of America	99			400										
● WLFT-CA	Baton Rouge	30	50 cp	482			IND		Touch Family Bcstg	00													
KBTR-CA	Baton Rouge	41	50 cp	203			IND		Great Oaks TV LLC	89	0312 p	na											
WBXH-CA	Baton Rouge	46	140 cp	494			UPN		Raycom Media Inc	90	0309	525	25										
*WLPB-TV	Baton Rouge	27	2,570	994	*25		PBS		Louisiana ETV	75						2	1	2	1	2	2	2	2
															TOTAL	**52**	**52**	**44**	**50**	**54**	**53**	**48**	**52**
															HUT %	36	37	35	35	37	40	35	35

● Indicates a change since last edition
1/ Estimate not available. See page 6. 2/ EBI estimates are for previous year than noted in column header. 3/ See introduction section for interpretation of revenue estimates.

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BIA fn

Tyler-Longview, TX Market Overview

DMA Rank: 107
BIA Revenue Rank: 108

Demographic and Economic Overview

(000s, except Retail Sales and EBI in $000,000s)

	1998	2003	Growth Rate	2003	2008	Growth Rate
DMA Population	653	695	1.3%	695	738	1.2%
Households	244	262	1.4%	262	281	1.4%
Retail Sales	NA 1/	9,346	NA 1/	9,346	11,601	4.4%
EBI 2/	8,991	10,706	3.6%	10,706	12,925	3.8%

Pop Rank #	107	**TV Households**	260	**White**	75.2%	**Avg Household**	$ 40,819
HH Rank #	107	**DMA Cable**	56%	**Black**	16.9%	**Per Capita**	$ 15,402
RS Rank #	96	**DMA ADS**	35%	**Asian**	0.6%	**Hispanic Origin**	10.7%
EBI Rank #	110	**DMA VCR**	89%			**DMA Counties**	14

Market Television Financials

(all figures in 000's, except percentages and ratios)

ESTIMATED GROSS REVENUES ★

1998	1999	2000	2001	2002	2003	Δ 98 - 03
$31,600	$33,100	$35,300	$31,600	$32,900	$33,200	1.0%

Δ 02 - 03	2004	2005	2006	2007	2008	Δ 03 - 08
0.9%	$35,700	$36,200	$38,800	$39,300	$42,300	5.0%

	% Network	% Natl/Regl	% Local
Estimated Breakouts	3.0%	32.0%	65.0%

	1998	2003	2008
Revenue/Retail Sales	NA 1/	$3.55/1,000	$3.65/1,000
Revenue/Capita	$48.39	$47.77	$57.32

Tyler-Longview, TX Competitive Overview

Calls	City Of License	Ch	Visual Power (kW)		HAAT	DTV Ch	LMA	Aff	Rep	Owner	Year Std	Date Acq'd	Sales Price (000)	Est '03 Revenue (000) 3/	Est Power Ratio	Avg '03 LCS	Feb 04	Nov 03	Jul 03	May 03	Feb 03	Nov 02	Jul 02	May 02
KLTV	Tyler	7	316		991	38		ABC	KatzT	Liberty Corp	54	0010	g1	18,600	0.89	63%	21	21	17	19	20	20	16	17
KFXK	Longview	51	4,680		1,250	31		FOX	Mllmn	White Knight Bcstg	84	9902	14,300st	5,000	1.00	15%	4	5	5	4	4	5	4	5
KCEB	Longview	54	5,000		827			UPN		Dimension Enterprise	03													
KETK-TV	Jacksonville	56	4,570	cp	1,499	22		NBC	Mllmn	Comm Corp of America	87	9905	38,000c1	8,400	1.15	22%	7	6	6	6	7	7	7	9
KTRE	Lufkin	9	158		669	43		ABC	KatzT	Liberty Corp	55	0010	g1											
KLSB-TV	Nacogdoches	19	4,270	cp	1,499	18		NBC	Blair	Max Media LLC	91	0401	4,000											
KLPN-LP	Longview	58	22		1,023			UPN		Warwick Comm Inc	97			600										
KWTL-LC			1					WB			98			600										
KFXL-LP	Lufkin	30	20		737			FOX		Warwick Comm Inc	97													

SHARE SUMMARY 9:00 AM - MIDNIGHT (%)

	Feb 04	Nov 03	Jul 03	May 03	Feb 03	Nov 02	Jul 02	May 02
ADJACENT MARKET STATIONS	6	7	3	6	6	7	3	6
TOTAL	**38**	**39**	**31**	**35**	**37**	**39**	**30**	**37**
HUT %	36	36	35	34	39	36	33	35

Allocations: Ch 14, Ch 38*, Ch 60, Tyler; Ch 64, Mineola; Ch 32*, Nacogdoches; Ch 40, Crockett

1/ Estimate not available. See page 6. 2/ EBI estimates are for previous year than noted in column header. 3/ See introduction section for interpretation of revenue estimates.

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